In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 334

THE UNITED STATES OF AMERICA, APPELLANT

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

REPLY BRIEF FOR THE UNITED STATES

The briefs for the appellees make a contention, not passed upon by the court below or treated in the main brief for the Government, that Section 209 of the 1949 Rent Act constitutes an unlawful delegation of power to the Expediter. Although we think it plain that the argument is without merit, a brief discussion of the point may be helpful.

Section 209 substantially incorporates the language of the Emergency Price Control Act of 1942, as amended, and revests eviction control in the hands of the Housing Expediter in substantially the same way in which it was vested in the Price Administrator under the Act of 1942. The language

of the 1942 and the 1949 Acts is almost identical.

Section 209 of the 1949 Act:

"Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act."

Section 2(d) of the 1942 Act:

"Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act."

The sole difference between Section 2(d) of the 1942 Act and Section 209 of the 1949 Act is the inclusion in the former of authority to deal with price practices which, of course, Congress had no occasion to confer upon the Expediter under the 1949 Act, dealing as it did solely with rent control. Section 2(d) of the 1942 Act was sustained as valid against the objection that it constituted an unlawful delegation of authority in *Taylor* v. *Brown,* 137 F. 2d 654, 662, 663 (E.C.A.), on the ground that it was appropriate to effective rent regulation. See, also, *Wilson* v. *Brown,* 137 F. 2d 348 (E.C.A.), and *Taylor* v. *Bowles,* 145 F. 2d 833 (E.C.A.).

The delegation in Section 209 of the 1949 Act has

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recently been sustained by the Court of Appeals for the Third Circuit in *Woods* v. *Durr,* 176 F. 2d 273. The opinion of Judge Maris stated on the constitutional point (p. 275):

> Amended section 209, the statutory provision under attack, so far as we are here concerned merely authorizes the Housing Expediter by regulation or order to regulate or prohibit those speculative or manipulative practices relating to recovery of the possession of controlled housing accommodations which in his judgment are equivalent to or likely to result in rent increases inconsistent with the purposes of the Housing and Rent Act. It thus appears that the eviction practices which the act authorizes the Housing Expediter to regulate or prohibit are limited to those which he finds to be speculative or manipulative and which are equivalent to or are likely to result in undue rent increases, in other words, those practices which are likely to result in the circumvention or evasion of the act. Moreover his power in this connection is limited by the provision of Section 301 that nothing in the act shall be construed to require any person to offer any housing accommodations for rent. These statutory provisions, as we have seen, are substantially equivalent to those which were contained in the Emergency Price Control Act of 1942. The latter provisions have been sustained as constitutional [5] and since the Housing and Rent Act of 1947 has itself also

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[5] *Bowles* v. *Willingham,* 1944, 321 U.S. 503, 64 S. Ct. 641, 88 L. Ed. 892; *Wilson* v. *Brown,* Em. App. 1943, 137 F. 2d 348; *Taylor* v. *Bowles,* Em. App., 1944, 145 F. 2d 833.

been sustained [6] we see no basis for holding that the provisions of amended Section 209 of the 1947 Act as modified by Section 301 of the 1949 Act are not likewise valid.

On three occasions this Court gave effect to the provisions in Section 2(d) of the 1942 Act allowing the Price Administrator to regulate evictions. In *Parker* v. *Fleming*, 329 U.S. 531, this Court, speaking of the 1942 Act, and specifically of Section 2(d), said the following (at pp. 536-537):

> The Emergency Price Control Act was intended in part to prevent excessive rents in the public interest, and the very anti-eviction regulations under which the Administrator granted the eviction certificate here were specifically designed to prevent manipulative renting practices which would result in excessive rents. Those regulations have been held valid by the Emergency Court of Appeals, *Taylor* v. *Brown*, 137 F. 2d 654, 662-663, and their validity is not here challenged.

See, too, *Porter* v. *Dicken*, 328 U.S. 252, where this Court enjoined a state court eviction on the ground that it violated the Act of 1942 and the eviction regulations issued by the Price Administrator pursuant to it. In *Fleming* v. *Rhodes*, 331 U.S. 100, the Act of 1942 and the eviction provisions of the Rent Regulation issued thereunder were invoked by this Court to prevent execution of judgments of eviction rendered by state courts. In that case, the

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[6] *Woods* v. *Cloyd W. Miller Co.*, 1948, 333 U.S. 138, 68 S. Ct. 421, 92 L. Ed. 596.

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landlords claimed that the Act of 1942, as amended in 1946, was unconstitutional in depriving landlords of vested rights obtained by judgment during the interim period (July 1 to July 25, 1946), when there was no rent control in effect. In none of the above three cases was any contention made that Section 2(d) contained an unlawful delegation of power.

In *Bowles* v. *Willingham*, 321 U.S. 503, this Court sustained the delegation of authority in the Price Control Act generally, without specific reference to Section 2(d). Emphasis instead was placed upon the provisions of Section 2(b) and (c), which conferred authority upon the Price Administrator to make adjustments of general applicability, and other adjustments as were "necessary or proper in order to effectuate the purposes of this Act." In sustaining the broader delegation of power contained in Section 2(b) and (c), this Court said the following (at p. 515):

> We recently stated in connection with this problem of delegation, "The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable." *Opp Cotton Mills* v. *Administrator, supra*, p. 145. In terms of hard-headed practicalities Congress frequently could not perform its functions if it were required to make an appraisal of the myriad of facts applicable to varying situations, area by area throughout the land, and then to determine in each case what should be done. Congress does not abdicate its func-

tions when it describes what job must be done, who must do it, and what is the scope of his authority. In our complex economy that indeed is frequently the only way in which the legislative process can go forward.

In the 1947 and 1948 Acts, Congress placed the question of eviction in the hands of the local courts, but this method of effectuating rent control proved to be unsatisfactory. Tighe E. Woods, the Housing Expediter, testified that black markets in overceiling rentals had been developed because the agency had been deprived of authority to bring statutory damage actions, apply criminal sanctions, *and regulate evictions* (Hearings before Committee on Banking and Currency on H.R. 198, etc., Feb. 7, 1949, pp. 41-42). As Mr. Woods pointed out, many tenants had acceded to landlords' demands for overcharges because of eviction fears, and while tenants could in some instances have successfully defended themselves against illegal evictions in the local courts, they were unwilling to run this risk. The result was that "the present system has not worked. The result is a gradual break of the legal ceiling" (*ibid.* p. 41). It was also testified by Mr. Woods that greater uniformity would be achieved, and a better opportunity to check upon the good faith of landlords seeking eviction for their own occupancy, if eviction control were placed back in the hands of the agency which was entrusted by Congress to police rent violations (*ibid.* p. 42). In the Report of the Senate Committee on Banking and Currency, the following was

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said respecting the proposed Section 209 (81st Cong., 1st Sess., Rep. No. 127, p. 10):

> The bill would also give the Housing Expediter authority to issue regulations governing the eviction of tenants from controlled housing accommodations. This will permit uniformity in the operation of eviction provisions, which under existing law are the subject of variation between local courts which results in actions that are discriminatory as between tenants in different local court jurisdictions. The committee believes that restrictions on evictions should be same in every locality.

For the above reasons we submit that there can be no question as to the validity of the delegation of authority contained in Section 209 of the 1949 Act.

Respectfully submitted,

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☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 [illegible]